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From:

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To:

Cc:

Subject: Calculation of value and interest rate on Property under IRC 6324A

This memorandum responds to your request for assistance. I coordinated these issues with the _____ Division. This advice may not be used or cited as precedent. If you have any questions please call me.

ISSUES

1. Does the calculation of the maximum value of required property under section 6324A(b)(2) always include four years of interest?
2. Is it legally permissible to use a flat 2% rate when calculating the required interest amount for purposes of section 6324A(b)(2)(B)?

CONCLUSIONS

1. The maximum value of required property under section 6324A always includes the amount of interest expected to become payable over the first four years of deferral.
2. If using a flat 2% rate results in an amount that is less than or equal to 45% of the underpayment interest rate, it is legally permissible.

LAW AND ANALYSIS

1. The maximum value of required property under section 6324A always includes the "required interest amount," which is the interest expected to become payable over the first four years of deferral.

Section 6324A(b)(2) states that the maximum value of collateral the Service may require as security for the § 6324A lien shall not exceed the total of "(A) the deferred amount, and (B) the required interest amount." fn1 Cases are typically referred to _____ to secure the § 6324A lien after a number of years have passed and the estate has already paid two or three years of the interest only payments. However, whether the "required interest" has been paid does not factor into the calculation of the maximum security that can be required pursuant to § 6324A(b)(2).

The terms “deferred amount” and “required interest amount” are defined in §§ 6324A(e)(1) and (2), respectively. The “deferred amount” is the “aggregate amount deferred under section 6166 (determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11).” The “required interest amount” is “the aggregate amount of interest which will be payable over the first 4 years of the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for the payment of the tax imposed by chapter 11).”

The term “deferred amount” is also referenced in § 6324A(a), which states in part that the amount of the special estate tax lien is “the deferred amount (plus any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount).” The amount of the lien, which does not include interest that has not yet accrued, is generally thought of as an unpaid balance due, yet the “deferred amount” is a defined and fixed number in § 6324A. This is not inconsistent with the general tax lien language found in section 6321, which provides that the amount of tax unpaid after demand shall be a lien in favor of the United States. While the lien amount starts out at the full amount due, it fluctuates with the accrual of interest and payments toward satisfaction. Therefore, to include a clarifying “unpaid” before “the deferred amount” in § 6324A(a) would have been unnecessary.

Accordingly, the maximum amount of collateral that the Service can require is the sum of the deferred amount plus the amount of interest which will be payable over the first 4 years of the deferral period, regardless of the outstanding balance. In deciding how much security to require, the maximum should not automatically be the default amount requested. Collateral can fluctuate in value over time. The Service should exercise its judgment when determining what protection is needed while keeping in mind that sections 6166 and 6324A were enacted as relief provisions.

1. If using a flat 2% rate results in an amount that is less than or equal to 45% of the underpayment interest rate, it is legally permissible.

Section 6324A(b)(2)(B) provides a framework for calculating the *maximum* value of property the Service may require as security for a special estate tax lien. The code does not require that the Service determine and/or require the maximum amount at any time. The Service should exercise discretion and judgment in determining the amount of collateral to actually require in each case.

The maximum amount of collateral the Service may require is the deferred amount plus the required interest amount. The required interest amount is the first four years of interest to be paid during deferral under section 6166. Section 6601(j) provides that when estate taxes are deferred under section 6166, a 2-part interest rate structure applies. Interest on the “2-percent portion,” defined in section 6601(j)(2), ^{fn2} is paid at the rate of 2%; then, interest on any remaining portion is paid at the rate equal to 45% of the underpayment rate established in section 6621. ^{fn3}

Forty-five percent of the underpayment rate effective as of October 1, 2008 is 2.7%. See Rev. Rul. 2008-47, 2008-39 I.R.B. 760. Therefore, the maximum amount of security that the Service could require is calculated by using the 2% rate on the 2-percent portion and a rate of 2.7% on any additional amount. Because this calculation's goal is to determine a maximum, the Service may use its judgment to simply use the lower 2% rate on the full deferred amount. However, if 45% of the underpayment rate is less than 2% at the time of calculation, the Service must use the 45% of the underpayment rate so as not to exceed the maximum statutory amount of security that can be required.

Footnotes

1. Section 6166 provides for deferred payment of estate taxes for eligible estates, with estates paying interest for the first four years followed by ten annual payments of principal plus interest.
2. For tax year 2008 the 2-percent portion is \$576,000.
3. The underpayment rate is the sum of the Federal short-term rate plus 3 percentage points. IRC § 6621(a)(2).